

Washington State Department of Transportation
15700 Dayton Avenue North
Seattle, WA 98133

April 5, 2005

Request For Proposals
Everett HOV Design-Build

ATTENTION: All Short-listed Proposers

Response To Questions No. 9

341. **Question:** Which of the items on the Price Proposal (ITP Form B-1) constitute the “Proposal Price”?
Response: The Price Proposal is the sum of all six items on Form B-1, Price Proposal. See ITP 3.6.1, and the Design-Build Contract “Contract Form” (Form F-10) Section 3.
342. **Question:** Question: 1-04.4(1). Please clarify the ramifications of having a minor change total becoming part of the total bid. If the aggregate of minor changes exceed that stated amount, confirm that Design-Builder has change order entitlement to cost. Please confirm that Design-Builder is entitled to a change order adjusting time and price for all minor change orders beyond the stipulated amount if it impacts the critical path.
Response: Section 1-04.4(1) The use of the “Minor Change” item is to facilitate the accounting process within WSDOT. It is a placeholder for future adjustments, if any, to the Contract Price. If the cost of a change is greater than the \$5,000.00 threshold then it would not be a minor change and requires a more formal change order, which in turn would create a new pay item. If it is equal to or less than \$5,000.00 then it falls within the minor change category and gets a more streamlined processing. Either way, the Design-Builder gets time and money if he meets the requirements to get time and money under the contract.
343. **Question:** Contract 1-05.3(2). If the Basic Configuration is defective and needs to be modified, any additional governmental approvals necessitated by the modification should entitle the Design-Builder to change order for cost and time. Please add this provision.
Response: Section 1-04.4(8) addresses increases in the Contract Price and/or extensions of the Contract Time resulting from a Necessary Basic Configuration Change. To the extent issues relating to governmental approvals are involved with the Necessary Basic Configuration Change, such issues would be addressed under this Section.
344. **Question:** Contract 1-08.3 pg 137 Please clarify the language regarding the obligation to submit a corrected schedule so that it is clear that this obligation only applies if: a) the delay is on a critical path item; and b) it is a delay not just a 20 day differential (i.e. should not have to submit if progress exceeds the schedule).

Response: A schedule update is required every month with the request for payment, without regard to whether the Design-Builder is ahead or behind schedule. No change will be made.

345. **Question:** Re: professional liability insurance requirements set forth in section 1-7.18 of its RFP, first paragraph: At least one of the carriers for professional liability insurance is not "approved by the State Insurance Commissioner pursuant to Chapter 48.05 RCW" since it is a non-admitted carrier. Therefore, can this requirement be modified or eliminated?

Response: This matter relating to non-admitted carriers will be modified by addendum #12.

346. **Question:** Re: professional liability insurance requirements set forth in section 1-7.18 of its RFP, first paragraph: 1-07.18(1)6: Can this professional liability insurance requirement be met by the design builder's designer? While removal of an insured vs. insured exclusion is not feasible in the professional liability insurance marketplace, it should not be a concern of either WSDOT or the design builder since it would be in their respective best interests not to be an insured under a professional liability insurance policy. Therefore, please clarify.

Response: The provision was modified by addendum #8. The question is no longer applicable.

347. **Question:** Re: professional liability insurance requirements set forth in section 1-7.18 of its RFP, first paragraph: 1-07.18(2)1: Having WSDOT approval for any insurance coverage that has more than a \$10,000 deductible/self-insured retention level is overly cumbersome since most (if not all) parties to this project will exceed that level. Therefore, can this requirement be modified or eliminated?

Response: The current specification has been used on other contracts. No change is required.

348. **Question:** Re: professional liability insurance requirements set forth in section 1-7.18 of its RFP, first paragraph: 1-07.18(2)4: Requirements set forth in subparagraphs a) through d) are not feasible in light of the professional liability insurance market. Can they be modified or eliminated?

Response: Section 1-07.18(1) paragraph 6 was modified by Addendum 8 to eliminate WSDOT as an additional insured on the professional liability policy. Section 1-07.18(2).4 subparagraphs a) through d) addresses additional insureds generally. In that the professional liability insurance no longer includes WSDOT as an additional insured, subparagraphs a) through d) would not be inconsistent.

349. **Question:** Re: professional liability insurance requirements set forth in section 1-7.18 of its RFP, first paragraph: 1-07.18(2)8: Request clarity on the "support" of the contract's indemnity intent in light of the contract language set forth in 1.07.14(1).2 since professional liability insurance does not include contractual liability coverage.

Response: 1-07.14(1).2 was replaced by an addendum. This question is no longer applicable.

350. **Question:** 1-03.15(4) - WSDOT needs to confirm that an affidavit signed in front of a notary satisfies the "under oath" requirement. If not, what is required to satisfy signing under oath. The under oath language is very unusual.
Response: This provision was taken directly from WSDOT's GSP on escrow documents. The Affidavit requirement is not something newly developed for this Project. Affidavits are generally signed under oath in the presence of a Notary.
351. **Question:** 1-03.15(7) The new language contains an inconsistency. In the first paragraph, the EPC is to be returned if the Design-Builder signs a final contract voucher certificate and has not reserved any claims. In item 4, it provides that it is to be returned if litigation is not commenced within the time period prescribed by law (which is quite an extensive time period). Item 4 needs to be clarified that it only applies if Design-Builder did not sign a final contract voucher certificate or reserved claims on such a certificate. Without this clarification, it is inconsistent and EPD can be held for 2 or more years after completion of warranty period. Modify item 4 to add "Unless the Design-Builder signed a Final Contract Voucher Certificate without a reservation of claims,"
Response: This provision was taken directly from WSDOT's GSP on escrow documents. If the Design-Builder does not reserve any claims and signs the final contract voucher, it waives all of its claims. In that situation, the escrow documents would be returned. The provision relating to litigation would only apply where claims are reserved on the final contract voucher. No change is required.
352. **Question:** 1-04.4(2) (o) The deletion of (other than Force Majeure events) creates more uncertainty in the documents. WSDOT could now argue that a Force Majeure event that could be anticipated somehow is no longer eligible for change orders. The deleted language should be reinserted. Insert (other than Force Majeure events.)
Response: 1-04.4(2)(o): The term Force Majeure is not a defined term in the Contract. It is not a term that WSDOT uses in any of its standard contracts. Division 1 allows the Design-Builder to obtain a time extension for such things as Fire and Strikes under Section 1-08.8. However, Division 1 does not allow the Design-Builder to obtain an increase in Contract Price for this type of event. The Design-Builder is eligible for a time extension, not a price increase. The provision as currently written is consistent with this outcome. No change is required.
353. **Question:** 1-07.15(1) The new language at the end on "no payment shall be made if the spill was caused by or resulted from the Design-Builder's operations or omissions" is unacceptable as it is overly broad. If this language was limited to hazardous waste introduced to the site, it would be acceptable. Unfortunately it is broad enough to cover non-negligent exacerbation of unknown pre-existing hazardous materials. With respect to unidentified pre-existing hazardous materials, this language must be limited to negligent exacerbation of pre-existing hazardous materials.
Response: 1-07.15(1): This provision was taken directly out of the current WSDOT Standard Specifications (Black Book). The current language is consistent with 1-07.14(1)g. No change is required.

354. **Question:** Contract 1-05.11(1) pg 58 In (b), please modify the provision as follows "Except for punch list items, Design-Builder has ensured ..."
Response: Chapter 1, Section 1-05.11(1) has been deleted by addendum. Information was added to Chapter 1, Section 1-08.5(1).3(d) for a mutually agreed list of "Punch List" work.
355. **Question:** Contract 1-09.13 pg 177. What is the relationship of the DRB process to the Claims resolution process? They have not been integrated.
Response: The DRB process is outlined in Chapter 1, Section 1-04.5 and provides nonbinding findings and recommendations to aid in the resolution of an issue. Chapter 1, Section 1-09.11(1) provides procedures for resolution which include the DRB. Claim procedure 1-09.11(2) provide the next process if 1-04.5 and 1-09.11(1) are not successful and finally to claims resolution 1-09.13(1). This is the same procedures as provided in WSDOT Standard Specifications for design-bid-build projects and will not be changed for this project.
356. **Question:** The proposed horizontal SSD values for EL-Line, as stated on page 6 of Appendix M1 "Design Parameters Addendum #4, dated 2-08-2005", appear to be incorrect. The two compound circular curves with PI at EL Sta 29+59 and EL Sta 31+27 have curve lengths that are less than the required SSD distance. Since the curve lengths are less than SSD, the formula for calculating required M distance, can't not be applied. The proposed SSD will have to be done by graphical method. Please see the attached exhibit for the approximate SSD values. It appears that the proposed design achieved 273 feet of Horizontal SSD for the curve with PI @ 31+27. This meets SSD requirement 35mph design speed. The proposed design speed for this curve as stated in the addendum #4 is 40mph. If the requirement is to meet 40mph DS, then the abutment wall for 5/628W NW OC replacement, will have to be set back further. How should we proceed?
Response: In the Conceptual Design, the WSDOT design approach was for this bridge to be demolished and reconstructed, therefore the bridge abutment locations were to be relocated as necessary to meet the RFP requirements. If the Design-Builder elects to have a different approach in meeting the RFP requirements, then they must develop the design not to have the identified conflict. They cannot use the conceptual alignment on its own, while leaving the existing abutment in place.

Bob Dyer
Project Director